

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION**

SYNERGY PROJECTS, INC.,

Plaintiff,

vs.

EDWARD R. GREEN et al.,

Defendants.

No. 14-CV-10-LRR

ORDER

The matter before the court is Plaintiff Synergy Projects, Inc.’s (“Synergy”) “Motion for Partial Summary Judgment Against Edward R. Green” (“Motion”) (docket no. 38).

On February 6, 2014, Synergy filed an Amended Complaint (docket no. 4). On May 8, 2014, Green filed an Answer to the Amended Complaint (docket no. 9). On October 15, 2014, Synergy filed a Motion for Leave to File Second Amended Complaint (docket no. 34). On October 22, 2014, the court granted the Motion for Leave to File Second Amended Complaint. October 22, 2014 Order (docket no. 36). On October 23, 2014, Synergy filed the Motion. On October 29, 2014, the Second Amended Complaint was separately docketed (docket no. 39). Green has not responded to the Motion or the Second Amended Complaint and the time for doing so has passed.

Synergy electronically filed the Motion for Leave to File Second Amended Complaint and attached the proposed Second Amended Complaint in compliance with Local Rule 15. Although it is clear that Synergy mailed to Green copies of the Motion for Leave to File Second Amended Complaint, it is unclear whether Synergy included copies of the proposed Second Amended Complaint in that mailing. *Compare* Motion for Leave to File Second Amended Complaint at 4, *with* Proposed Second Amended Complaint (docket no. 34-1) at 27. The Clerk of Court mailed to Green the Second Amended Complaint after it

was docketed on October 29, 2014. *See* Second Amended Complaint docket entry text. It is unclear, therefore, whether Green had notice of the content of the Second Amended Complaint when Synergy filed the Motion on October 23, 2014.

In consideration of the above procedural history, the court finds that it would be inappropriate to address the merits of the Motion. The court also questions the extent to which Synergy can rely on Green's Answer to the Amended Complaint in support of the Motion. *See Fruco Const. Co v. McClelland*, 192 F.2d 241, 245 (8th Cir. 1951) (noting that “[a]n abandoned or superseded pleading is out of the case, so far as admissions by rule of pleading are concerned”). Accordingly, the court shall deny the Motion without prejudice. Synergy may re-file a motion for summary judgment in accordance with the applicable deadlines and instructions set forth in the Scheduling Order (docket no. 19) and the Trial Management Order (docket no. 24).

In light of the foregoing, the Motion for Partial Summary Judgment Against Edward R. Green (docket no. 38) is **DENIED WITHOUT PREJUDICE**.

IT IS SO ORDERED.

DATED this 5th day of February, 2015.



LINDA R. READE
CHIEF JUDGE, U.S. DISTRICT COURT
NORTHERN DISTRICT OF IOWA